IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 22718 of 2006(D)

PETITIONERS:

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1. ABDUL AZEEZ, S/O.MUHAMMEDKUTTY HAJI,
   KIZHAKKETHIL HOUSE,
   PILATHARA, KADAMPUZHA.

2. MANSOOR ALI,
   S/O.MUHAMMEDKUTTY HAJI,
   KIZHAKKETHIL HOUSE, PILATHARA,
   KADAMPUZHA.

BY ADV. SRI.K.P.MUJEEB

RESPONDENT:

MARAKKARA GRAMA PANCHAYATH,
REP. BY ITS SECRETARY,
MARAKKARA.P.O., VIA. KADAMPUZHA,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.R.HARIKUMAR
SRI.V.G.ARUN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.22718 OF 2006

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DATED THIS THE 6TH MARCH, 2007

J U D G M E N T

The petitioners claim that they are in absolute possession and ownership of 2.25 cents of land in R.S.No.176/2 of Melmuri amsom desom by virtue of a jenm assignment deed, copy of which is produced as Ext.P1. The Writ Petition has been filed by them arraying the Marakkara Grama Panchayat in Malappuram District as the respondent, seeking an order restraining the Panchayat from undertaking any construction activity in the property owned by them. They allege that on 18.8.2006 some persons claiming to represent the respondent-Panchayat represented to them that the Panchayat is about to take up construction of some building on the property covered by Ext.P1. The petitioners assert that the above property never vested in the Panchayat under the provisions of Section 218 of the Kerala Panchayat Raj Act. Thus, the respondent has no right whatsoever to put up construction on the property. On coming to know about the Panchayat's proposal, the petitioners submitted Ext.P2 representation before the Secretary of the Panchayat requesting that early steps may be taken for stopping illegal construction or trespass into the property.

2. The Panchayat has filed a counter affidavit. It is submitted therein that the present Writ Petition which is filed for establishing the proprietary right of the petitioners over immovable property is not maintainable in law. The property in question lies at Pilathara Junction and for constructing a waiting shed for the use of passengers of the bus services, the then owner relinquished the right over one cent as early as on 4.10.1991 and Ext.R1(a) produced along with the counter affidavit is copy of the relinquishment form. From the date of Ext.R1(a) onwards the Panchayat is in possession of the property. The petitioners will not get any right over the land covered by Ext.R1 (a) through Ext.P1. At the time when the relinquishment was made, the Poura Samithy which was in the forefront of the proposal for construction of the waiting shed paid Rs.2000/- to the owner of the land and some constructions were also made. Since plan funds were not available, the construction work could not be completed at that time. Though in the year 2000-01 an amount of Rs.20,000/- was provided in Project No.129 for construction of the waiting shed, at that time also the construction could not be made. But recently the Panchayat has received a mass petition on 11.8.2006 demanding immediate construction of the waiting shed. On receiving the mass

petitioner, the Secretary and the President of the Panchayat visited the plot and were proceeding with the matter. It was while so that the petitioners submitted Ext.P2. They tried to construct a side wall which was not permitted by the Panchayat. Their claim based on Ext.P1 is not sustainable. They have no possession over the property. Construction of the waiting shed is a work to be taken immediately in public interest. The desire of the petitioners is to grab the property of the Panchayat it is contended.

3. The petitioners have filed a reply affidavit. Referring to Ext.R1 (a) it is contended that Subramanian who executed Ext.R1(a) is the person who had conveyed the property to the predecessors-in-interest of the petitioners. The attempt of the Panchayat is to trespass upon the property belonging to the petitioners on the strength of Ext.R1(a) executed by somebody who had ceased to have any interest over the property. The petitioners' property and the property allegedly owned by the respondent-Panchayat as per Ext.R1(a) are different. Under the guise of public interest the Panchayat has no right to make constructions upon the petitioners' property.

4. Heard Sri.K.P.Mujeeb, learned counsel for the petitioners and Sri.T.R.Harikumar, learned counsel for the respondent. Counsel

addressed arguments on the basis of the pleadings and the documents placed on record. Mr.Mujeeb would place before me a photo copy of the recent encumbrance certificate in respect of the property to show that at the time the petitioners purchased the property, the same was free from all encumbrances and restrictive covenants. Sri.Harikumar, apart from making submissions on the basis of the counter affidavit, would submit that there is a serious dispute regarding the identity of the property and the petitioners at any rate are not having physical possession over the property.

5. In the nature of the issue which has arisen between the parties, I am of the view that the petitioners will have to seek their remedies from a competent civil court. Accordingly I dispose of the Writ Petition relegating the petitioners to seek remedy from a civil court. Even as I do so, I direct that the order directing maintenance of status quo regarding construction will continue for a period of six more weeks from today.

(PIUS C. KURIAKOSE, JUDGE)

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